



Hans Köchler

**Professor of Philosophy, University of Innsbruck, Austria
President of the International Progress Organization**

**THE USE OF FORCE IN THE NEW INTERNATIONAL
ORDER
On the Problematic Nature of the Concept of Humanitarian
Intervention**

Paper delivered at the international conference

"Interventionism against International Law: From Iraq to Yugoslavia"

Madrid, 20 November 1999

C o n t e n t s

- (I) The new power balance since the end of the Cold War**
- (II) The origin of the concept of "humanitarian intervention"**
- (III) The new system of interventionism**
- (IV) Consequences and requirements in the era of "globality"**
- (V) Conclusion: The predicament of the United Nations**

(I) The new power balance since the end of the Cold War

Since the sudden collapse of the post-war order in 1989 – that occurred as a result of the disintegration of the Soviet bloc – the *bipolar* power balance of the Cold War has been replaced by a *unipolar* structure. In the present global constellation, there is only one superpower that dominates not only in the field of geo-strategy but sets the economic, political and ideological agenda on a global scale. This reality of power politics gradually undermines the *international rule of law* which has been cherished as a major achievement of the international community since the two World Wars and has been idealistically enshrined in the United Nations Charter. The "checks and balances" that existed as a basic element of the Cold War's power structure are no longer in place.

Inevitably, this process – abruptly set in motion by the events in 1989 – is accompanied by the gradual erosion of the very *legitimacy* of the United Nations as the guarantor of a just international order of peace and mutual respect among all nations on the basis of the legal notion of "sovereign equality."¹ Because of the extreme imbalance in today's power relations, the only superpower and her allies are increasingly tempted to make use of United Nations structures – in particular as regards the Security Council – for the promotion of their own strategic interests. So-called "collective enforcement actions" on the basis of Chapter VII of the Charter (that are *de facto* unilateral military actions exclusively directed by the United States) have become the preferred tool of global hegemony in a self-declared "New World Order." Comprehensive economic sanctions are an essential part of this new form of hegemonic policy. Formally *multilateral* action in the legal framework of the United Nations Charter is degenerating into "coalition wars" against those who challenge the unipolar power structure. All relevant decisions on the conduct of such actions are, in reality, *imposed* upon the United Nations member states, in the disguise of "humanitarian action," by means of Machiavellian power politics. The tactics of blackmail and coercion vis-à-vis the rest of Security Council member states has become the general method of superpower "diplomacy" in the present unipolar era.² This process started with the action of the self-declared "international community" or better: "Gulf War Coalition," against Iraq in 1990-1991.

¹ See resolution 2625 (XXV) of the United Nations General Assembly (24 October 1970): *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*.

² These methods have been well documented by Erskine Childers: "The Demand for Equity and Equality: The North-South Divide in the United Nations," in Hans Köchler (ed.), *The United Nations and International Democracy*. Vienna: Jamahir Society for Culture and Philosophy, 1995, pp. 17-36, esp. pp. 32f.

In sharp contrast to the international consensus that characterized the post-war order until 1989, the *use of force* has again become an accepted means to conduct international affairs. The Western power establishment reintroduced this concept under the cover of "collective enforcement actions" supposedly based on the UN Charter but actually derived from the strategic interests of a small minority of member states under the leadership of the only remaining superpower. This implies a gradual return to the old system of international law as it existed prior to World War I. According to the traditional doctrine of international law – which was considered outdated since the banning of the use of force in international relations in the Briand-Kellogg Pact –, the *jus ad bellum* constituted a generally accepted element of a system of basic norms governing the relations among sovereign states. Seen in this perspective, what we witness today in the field of international law is not *progress* but, in terms of humanity and of an awareness of the legal implications of transnational action, *regression* in the direction of the anarchy of power politics.

It is noteworthy for any critical observer of international relations that massive *use of force* – as in the cases of the interventions against Iraq and Yugoslavia more recently – is being veiled, because of concerns about international public opinion, in *humanitarian rhetoric* while in reality the actual conduct of warfare – being euphemistically portrayed as "collective enforcement action" – contradicts the basic norms of international humanitarian law and, in many instances, even constitutes war crimes (cynically being committed in the name of "humanity"). The use of banned weapons such as depleted uranium missiles and fragmentation bombs, the deliberate targeting of civilians and civilian installations, the systematic destruction of the civilian infrastructure,³ the starving of the entire population of a country through the combined measures of hitting the infrastructure and enforcing comprehensive economic sanctions,⁴ etc. are ample proof of the hypocritical nature of those modern "humanitarian wars" as they are called by the propagandists of superpower rule in this era of global unipolarity.

³ For the case of Iraq see Ramsey Clark, *The Fire this Time. U.S. War Crimes in the Gulf*. New York and Emeryville/CA: Thunder's Mouth, Press, 1992. For the case of Yugoslavia see: *NATO Crimes in Yugoslavia. Documentary Evidence. 25 April-10 June 1999*. Vol. II. Belgrade: Federal Ministry of Foreign Affairs, July 1999.

⁴ On the legal nature of comprehensive economic sanctions see Hans Köchler, "The United Nations Sanctions Policy and International Law," in: *Democracy and the International Rule of Law*. Vienna/New York: Springer, 1995, pp. 117-154.

(II) The origin of the concept of "humanitarian intervention"

In the Western world – that nowadays claims to represent the whole of mankind – the general acceptance, or at least toleration, of the resort to force in the name of "humanity" (or, for that matter, of a fictitious "international community") is being sought through the revival of the outdated concept of "humanitarian intervention." The newspeak of the present hegemonial order has even created the term "humanitarian bombing" that outrageously mystifies (or glorifies) the actual business of warfare. The doctrine behind this concept and the term "humanitarian intervention" itself was extensively used during the 19th century. Military actions by the European powers (the so-called "Holy Alliance" of the time, established in 1815 by the rulers of Austria, Prussia and Russia and later joined by those of England and France) against the Ottoman (Turkish) Empire were termed as "humanitarian intervention" (*intervention d'humanité*). Armed expeditions on Ottoman territory were made in favor of presumably "persecuted" Christian population groups. A detailed case study and critical assessment of these interventions was presented as early as 1910 by the French international law expert Antoine Rougier.⁵ Disputed as it was in academic circles of the time, this concept was a substantial part of the legitimation ideology of European imperialism to justify the European powers' interference in the territory of the major rival power, the Ottoman Empire.

The rationale behind this 19th century concept of "humanitarian intervention" is undoubtedly similar to the spirit of the medieval crusades. The logic of the legitimation of power politics is the same now and then. In all these acts of aggression and interference we witness a certain element of self-righteousness and fanaticism based on a concept of "human rights" (or rights of humanity) by which the Western powers authoritatively defined and claimed their own moral and civilizational superiority. The new concept of the "clash of civilizations"⁶ seems to revive these traditional enemy stereotypes and hegemonial discourses in favor of a right – or even duty – to intervene. The term "Holy Alliance" underlined the intolerant religious – or ideological – nature of the self-declared messengers of Christianity and guardians of the world. All the incursions into the territory of the Ottoman Empire during the 19th century that were described as "humanitarian intervention" by the perpetrators of the

⁵ "La théorie de l'intervention d'humanité," in: *Revue générale de Droit International Public*, vol. 17, n. 1 (January-February 1910), pp. 468-526.

⁶ See Samuel P. Huntington, ""The Clash of Civilizations?," in: *Foreign Affairs*, vol. 72, n. 3 (1993), pp. 22-49.

aggression were in fact motivated by the power politics and strategic interests of those intervening European powers.

Against the background of the history of European imperial politics it becomes obvious that the actual talk of "humanitarian intervention" is nothing new. The philosophical and legal analyst cannot deny the impression of *déjà vu*: as essential part of a legitimization discourse of power politics, humanitarian intervention of the post-Cold War era is identical to the Holy Alliance's earlier concept. As stated above, the revival of the concept under the circumstances of power politics in the present unipolar order is not progress but regression in terms of the very ideals of humanity. This implies a retrogressive process in regard to the nature of international law which again seems to become a tool of Machiavellian politics in favor of the actual holder(s) of power.

(III) **The new system of interventionism**

Having outlawed armed intervention and interference in other states' affairs was considered by the community of nations as a major achievement in the development of modern international law. Having replaced a power-centered system of norms regulating the behavior of sovereign states by a set of principles that are *above* the sovereign power of the state, i.e. that are binding upon all states and from which no derogation is possible, was perceived by legal scholars as genuine progress in the direction of a norm-centered international order, the very basis of the universal rule of law. The principles of non-interference in the internal affairs and of the non-use of force (coercion) in international relations have become the cornerstones of the international legal system as it was incorporated in the Covenant of the League of Nations and as it is now represented by the United Nations Organization. These rules have become part of the *jus cogens* of general international law from which no derogation is possible under whichever circumstances. Article 2 (4) of the United Nations Charter defines the principle of non-interference as follows: "All Members [member states] shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state ..."

Different from what is being proclaimed in the UN Charter, and in sharp distinction to the idealistic rhetoric of the Western powers' foreign policy proclamations, a *new reality of power politics* has taken hold of relations between states phasing out "modern" international

law by a kind of "post-modern" system: an "imperial" interpretation of international norms according to the interests of the actual hegemonial power. In the power constellation at the end of the second millennium, (1) the Security Council of the United Nations – as long and to the extent that it can be made use of for the purposes of the only superpower and her allies – and (2) the North Atlantic Treaty Organization (NATO) have become the successors of the Holy Alliance of the past century. The spirit of the medieval crusades seems to be well preserved in the neo-colonial ideology underlying "post-modern" humanitarian wars under the auspices of the "unholy alliance" of an instrumentalized Security Council or of NATO.

International lawlessness has reached such a state of imperial arrogance that the recent NATO Summit in Washington DC (23-24 April 1999) *de facto* declared NATO's *supremacy* over the Security Council of the United Nations by reserving to itself the right to conduct so-called "non-Article 5 crisis response operations" outside the framework of the right of self-defense.⁷ It is to be recalled, in this context, that the concept of collective self-defense was the rationale behind NATO's establishment after World War II. Article 5 of the North Atlantic Treaty implicitly recognizes the primacy of the Security Council by specifically referring to Article 51 of the United Nations Charter⁸ which affirms the existence of a right of individual and collective self-defense "until the Security Council has taken measures necessary to maintain international peace and security." By justifying so-called "out of area operations" outside the framework of its own Treaty by means of its neo-imperial doctrine, the so-called "new" NATO – which in fact revives the *old* realities of the great power politics of Europe – has effectively established the "rule of force" (i.e. the rule of the powerful) over the rule of law. In the disguise of international security and of lofty humanitarian considerations related to democracy and basic civil and social rights, the Western military alliance – not the community of nations – has put an end to *international law* as a system of norms binding upon all states whether weak or strong, rich or poor, big or small. NATO has replaced this doctrine by the *realist dogma* according to which the more powerful has the right to create norms on the basis of his factual superiority that is usually veiled in the clothes of a noble

⁷ See the "The Alliance's Strategic Concept" as approved by the Heads of State and Government at the meeting of the North Atlantic Council (Washington, DC, 23-24 April 1999), esp. Part II: Strategic Perspectives, e.g. Art. 31.

⁸ The Article carefully formulates the right to use armed force "in exercise of the right of individual or collective self-defence recognised by Article 51 of the Charter of the United Nations." The Article particularly states: "Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security." In legal terms, in the context of the North Atlantic Treaty of 1949, the legal basis of NATO, there is no doubt about the supremacy of the UN Security Council.

mission on behalf of humanity. In this sense, the neo-colonial ideology of the "new" NATO⁹ is not much different from the religious-imperial ideology of last century's Holy Alliance.

Against this background, it is regrettable to note a certain complacency of international civil servants such as the Secretary-General of the United Nations vis-à-vis this process of erosion of international legitimacy as it was represented, since 1945, by the United Nations Organization. In his statement to the 1999 UN General Assembly, Mr. Kofi Annan propagated a "new concept" of state sovereignty that is supposed to be compatible with the concept of (humanitarian) intervention. He spoke of a "developing international norm in favor of intervention to protect civilians from wholesale slaughter."¹⁰ When uttered in reference to NATO's attack on Yugoslavia, such a statement justifying the "unilateral" use of force outside the framework of the United Nations might even be seen as cynical when one takes into account that this supposedly "humanitarian" intervention has caused even greater suffering to the civilian population on the territory of the Federal Republic of Yugoslavia and was itself carried out in violation of the general standards of international humanitarian law.¹¹ Neither international civil servants nor legal theorists should fall into the trap of the new imperial ideology of humanitarian action as long as it is not proven that the *actual conduct* of whichever intervention is not dictated by power politics but determined by strictly humanitarian considerations.¹² The dilemma faced by those who try to sell brute power politics as humanitarian action has rightly been identified as such by the theorists of humanitarian intervention in the 19th century. Similar to the problem created by the great power veto in the Security Council that grants *de facto* immunity to those powers in regard to their own acts of aggression,¹³ the definition of the criteria for the applicability of the norm of humanitarian intervention by the very "perpetrators" of the respective action leads to a kind of legal arbitrariness that is detrimental to whatever remains of the international rule of law in the framework of an imperial international order. As early as 1910 Antoine Rougier stated that "il est pratiquement impossible de séparer les mobiles humains d'intervention des mobiles politiques et d'assurer le désintéressement absolu des États intervenants. ... Dès l'instant que

⁹ On the ideological implications of NATO's policies as exemplified in the war against Yugoslavia see Daniel Singer, *Against the Holy Alliance* (1999) at <http://www.igc.apc.org/solidarity/atc/81NatoSinger.html>.

¹⁰ "Two concepts of sovereignty," in: *The Economist*, 18 September 1999.

¹¹ For a comprehensive legal evaluation see Reinhard Merkel, "Das Elend der Beschützten. Rechtsethische Grundlagen und Grenzen der sog. humanitären Intervention und die Verwerflichkeit der NATO-Aktion im Kosovo-Krieg," in: Reinhard Merkel (ed.), *Der Kosovo-Krieg und das Völkerrecht*. Frankfurt am Main: Suhrkamp, 2000, pp. 66-98. (edition suhrkamp 2152)

¹² See the debate in Stanley Hoffmann (ed.), *The Ethics and Politics of Humanitarian Intervention*. Notre Dame Studies on International Peace. Notre Dame, Indiana: University of Notre Dame Press, 1996.

les puissances intervenantes sont juges de l'opportunité de leur action, elles estimeront cette opportunité au point de vue subjectif de leurs intérêts du moment."¹⁴

If one takes into consideration the impossibility to separate "humanitarian" action from the dictates of power politics it becomes obvious that "humanitarian intervention" is not a sound legal concept.¹⁵ As stated by international law theorists long before World War I, the concept is prone to abuses for the sake of power politics, i.e. in favor of the interests of those who have the means to actually conduct an intervention. Because of the lack of a system of checks and balances that is required to determine the legality of any political or military action, the generally accepted maxim that "no one can be judge in his own case" cannot be adhered to in the case of humanitarian intervention. The actual practice of humanitarian intervention in the US-dominated "New World Order" resembles its application in the earlier era of European imperialism and colonialism. NATO's new defense doctrine has further widened the gap between the requirements of a genuine international legal order and the actual conduct of power politics. Even the vague traces of a "division of powers" in the United Nations system – between the Security Council, the General Assembly and the International Court of Justice – have now disappeared in face of a doctrine that claims the right of military intervention exclusively for the members of the Western military alliance, overriding even the competence of the UN Security Council (as was clearly demonstrated to the rest of the world in the case of the intervention in Yugoslavia).

In view of the abuses of and the contradictions inherent in the application of the concept of humanitarian intervention, it may well be argued that the *principle of non-interference*, as part of *jus cogens* of general international law, should be upheld in the context of all measures of the United Nations aimed at the preservation or restoration of international peace and security.

"Humanitarian intervention," in the framework of global power politics, is part of a larger strategy of the only remaining superpower to establish *global hegemony*. As a result of this hegemonial drive since the last decade, major threats to international security and to the stability of the international order evolved and gradually escalated because of the *unilateral*

¹³ See the analysis by the author: *The Voting Procedure in the United Nations Security Council*. Studies in International Relations, XVII. Vienna: International Progress Organization, 1991.

¹⁴ "La théorie de l'intervention d'humanité," loc. cit., p. 525.

¹⁵ See the critical analysis by Otto Kimminich, "Der Mythos der humanitären Intervention," in: *Archiv des Völkerrechts*, vol. 33 (1995), pp. 430-458.

use of power by the United States. In the first phase, we witnessed the arrogation of quasi-absolute powers by some permanent members of the Security Council under the leadership of the US, which allowed those countries to conduct wars of aggression ("coalition wars" as the one against Iraq in 1991) in the name of the United Nations. The "hijacking" of the UN Security Council in 1990/91 by a coalition of states under the leadership of the US is the most pertinent example of such a hegemonial policy in contravention to the UN Charter.¹⁶

In this process of the escalation of power politics, the hegemonial power and her allies went one decisive step further during the Kosovo crisis in 1999. The arrogation of the Security Council's powers under Chapter VII of the Charter by a *regional* organization such as NATO – as was the case in the war of aggression against Yugoslavia for which only a legitimization *post festum* was orchestrated in the Security Council¹⁷ – dealt not only a fatal blow to the United Nations system of collective security, it effectively undermined international law as a system of commonly respected norms that are binding upon all states.

The renaissance of old European imperialism is veiled in the "modern" clothes of human rights and democracy; the concept of "humanitarian intervention" is the most convenient cover for actions outside the traditional United Nations framework.¹⁸ NATO has created its own defense doctrine in order to justify actions in transgression of its originally defensive mandate placed – albeit fictitiously – within the framework of the UN system. This change of paradigm is documented in "The Alliance's Strategic Concept" that was adopted by NATO's Heads of State and Government at the Washington Summit in April 1999. This concept, in open contradiction to the North Atlantic Charter, provides for "non-Article 5 crisis response operations"¹⁹ that cannot be derived from the right of self-defense²⁰ and can in no way be reconciled with Art. 51 of the UN Charter.²¹

¹⁶ See the memorandum by the International Progress Organization to the President of the United Nations Security Council: *Memorandum on the Invasion and Annexation of Kuwait by Iraq and Measures to Resolve the Crisis Peacefully*. Doc. P/K/12313, Vienna, 28 September 1990.

¹⁷ See the news release of the International Progress Organization: *Yugoslavia -- NATO -- United Nations. Call for invoking the Uniting for Peace Resolution of the UN General Assembly*, Vienna, 7 April 1999 at <http://i-p-o.org/kosovo.htm>.

¹⁸ On the implications of this process for international law in general see Antonio Cassese, "Comment: *Ex iniuria ius oritur*: Are We Moving towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community?" in: *European Journal of International Law*, online edition, at <http://www.ejil.org/journal/Vol10/No1/com.html>.

¹⁹ See Art. 31 of "The Alliance's Strategic Concept" on "Conflict Prevention and Crisis Management."

²⁰ Art. 25 of the Alliance's Strategic Concept speaks of a "broad approach to security" mentioning economic, social and other factors "in addition to the indispensable defence dimension." (Emphasis by the author.)

²¹ The affirmative statement in Art. 15 of the Alliance's Strategic Concept ("The United Nations Security Council has the primary responsibility for the maintenance of international peace and security and, as such, plays a crucial role in contributing to security and stability in the Euro-Atlantic area") can only be seen as paying lip

(IV) Consequences and requirements in the era of "globality"

What is required under the circumstances of a "post-legal" international order and in the absence of *collective security*, is *collective resistance* by the majority of the nations of the world against the *diktat* of a coalition of states that exclusively reserves to its members the right to speak and to *act*, not only politically but militarily, in the name of "humanity" or, in the newspeak of the Western establishment, of the "international community." As stated in a recent meeting on the new global realities: "We have to be ready with replacement policies which restore power to communities and democratic States while working to institute democracy, the rule of law and fair distribution at the international level."²² If the nations of the world remain silent or divided vis-à-vis the *false representation* of humanity (mankind), new "zones of conflict" will be created wherever and whenever the hegemonial power and her allies deem it appropriate. The present division of the Arab world – with its detrimental effect on Palestinian self-determination – is a clear case in point. The "new humanitarian world order" – for which the monopoly of definition is claimed by this very hegemonial power – will be one of quasi-colonial subjugation of the majority of mankind under the prerogatives of "new" NATO's self-declared "Holy Alliance."

The global claim to power by the Western alliance under the leadership of the only remaining superpower has to be countered by decisive action on the intellectual and political level at the same time. The redefinition of major concepts of international law – and, for that matter, the re-balancing of the system of norms of international law – in favor of the interests of only one state or one group of states must not go unchallenged. The majority of mankind cannot accept the ideological hegemony of the Western establishment (including the power of definition of basic normative concepts).

As explained earlier, the agreement on *legal*, not merely *moral*, norms restricting the arbitrary exercise of power and banning the use of force in international relations has been considered a major achievement of international law and, for that matter, of the "international

service to an international legitimacy the foundations of which are being challenged by the new concepts of security and defense introduced in the Alliance's Strategic Concept and demonstrated in NATO's action in Yugoslavia.

²² Susan George, *A Short History of Neo-liberalism: twenty years of elite economics and structural change*. Summary of a paper presented at the conference "Economic Sovereignty in a Globalizing World," Bangkok, 24-26 March 1999.

community," particularly since the end of the World War I. This achievement is in jeopardy when the *jus ad bellum*, effectively abrogated in the modern codex of general international law, is being reintroduced through the back door – in the disguise of a noble but misleading concept such as that of "humanitarian intervention."²³ This development is accompanied by the revival of a kind of Soviet-style doctrine of *limited sovereignty* in favor of the hegemonial state(s) and to the detriment of the states of the Third World that, whenever it is convenient, are labeled as "rogue states"²⁴ and whose leaders are portrayed as "enemies of humanity." In the present international system where power politics effectively creates norms of international law and invalidates others, the lack of a genuine judiciary body that would impartially judge the legality of the use of force – even when ordered by the UN Security Council – is particularly felt. The International Court of Justice, under the present Charter, cannot play this role of international "constitutional court." Its statute obliges it more to act on the level of "moral" appeals than of legal rulings.

As a result of the developments of the last decade of the twentieth century, we have to try to reconcile original idealistic expectations in regard to a universal legal order based on human rights with the realities of power politics in a unipolar constellation.²⁵ In such an international context that is characterized by a drastic *imbalance* of power relations among states, world *peace* is better preserved and international *security* is more effectively guaranteed if the states as the primary subjects of international law respect each other's sovereignty without reservation. The principle of "sovereign equality" as enshrined in Art. 2 (1) of the UN Charter must not be weakened or abrogated in favor of a dubious "right" – or "duty" as some would like to portray it – to intervene. As history has amply demonstrated, such a concept is prone to abuse by the more powerful states – or the most powerful state – in the international arena. The ultimate result of the acceptance of such a major paradigm change in the system of international law will be a state of *global anarchy* whereby in each and every instance the weaker states are at the mercy of the more powerful ones.

²³ See the pertinent analysis of the new humanitarian version of power politics by Noam Chomsky, *The New Military Humanism. Lessons from Kosovo*. London: Pluto Press, 1999.

²⁴ The recent "change of terminology," as announced by US Secretary of State Madeleine Albright, from "rogue states" to "states of concern" reflects more changes of tactical alliances of the United States, not a change of doctrine.

²⁵ On the general implications for international order see Hans Köchler (ed.), *Globality versus Democracy? The Changing Nature of International Relations in the Era of Globalization*. Studies in International Relations, XXV. Vienna: International Progress Organization, 2000.

As long as the international system is based on a *multitude* of sovereign states as its actors, the concept of "humanitarian intervention" will always be implemented according to the interests of the more powerful. Contrary to the aspirations of the "idealists" and because of the crude realities of power politics the concept remains a *Fata Morgana*. The Western power establishment, claiming moral and ideological supremacy, has effectively imposed its monopoly in regard to the definition of such key concepts as "human rights," "democracy," "rule of law," etc., using them as tools to justify whatever intervention may be deemed appropriate to further Western interests.

(V) Conclusion: The Predicament of the United Nations

Since the NATO war against Yugoslavia, "humanitarian intervention," based on the false claim of Western states to conduct foreign policy in conformity with the principles of morality (similar to what – in another era prematurely declared as a "new order" – Tsar Alexander of Russia and his colleagues had stated in the declaration of the Holy Alliance)²⁶, has become the keyword symbolizing the global claim to power of the hegemonial forces of the present unipolar order. The slogan succeeds the earlier propaganda terms of "New World Order," "End of History," "Clash of Civilizations," etc. Those who believe in the basic rights and in the equality of all nations whether large or small, weak or strong, must not allow the self-appointed speakers – or guardians – of the "international community" to impose their ideology upon the rest of mankind under the realities of a new "empire," this time, unlike previous empires of the 19th and the beginning of the 20th century, of a truly *global* and all-encompassing nature.

In simple terms: the re-drafting of international law, if it is seriously undertaken, must not be the prerogative of a privileged few who are in control of the Earth's resources, but is the sovereign right and responsibility of the global community of states and their peoples.

²⁶ "They solemnly declare that the present Act has no other object than to publish, in the face of the whole world, their fixed resolution, both in the administration of their respective States and in their political relations with every other Government, to take for their sole guide the *precepts of that Holy Religion, namely, the precepts of justice, Christian Charity, and Peace*, which, far from being applicable only to private concerns, must have an immediate influence on the councils of princes, and guide all their steps, as being *the only means of consolidating human institutions* and remedying their imperfections." (Text of the Holy Alliance, Paris, 14-26 September 1815, published in J. H. Robinson and C. Beard [eds.], *Readings in Modern European History*. Vol. 2. Boston: Ginn and Company, 1908, p. 354.) (Emphasis by the author.) The idealistic pathos of this early document of "moral" foreign policy very much resembles today's lofty declarations emanating from the cabinets

If the United Nations Organization is unable to provide the framework for such a process on the basis of equality and genuine partnership among all nations,²⁷ it may be gradually "phased out," in the course of events, under the dictates of power politics. The deplorable results of this process can be observed in today's global order since the end of the Cold War and particularly since the effective sidelining of the United Nations Organization during the Kosovo war. The only alternative to the gradual de-legitimization of the United Nations by some of its very founders will be the creation of a transnational entity, eventually at the initiative of the underprivileged nations of the Third World, that truly represents the *peoples* and their aspirations towards peace, justice, and a democratic living together in our increasingly interconnected and "globalized" world. It seems to be the predicament of the United Nations Organization that it has failed, under the dictates of power politics and because of the compromises imposed upon it by the very founders in regard to the formulation of basic principles in the Charter, to make the Preamble's slogan of "*We the peoples*" a reality.

The abuse of idealistic notions such as that of "humanitarian intervention," in the present global system of power, and the instrumentalization of the ideals of democracy and human rights for the sake of great power politics and domination leave no other choice to the peoples of the world than that of envisaging an *alternative international order* outside the framework of the present system as represented by the United Nations. Such a "paradigm change" will inevitably occur because the major power of the post-Cold War order has effectively done away with the system of international law as it was incorporated by the League of Nations and later the United Nations Organization. In the present transitory phase, the anarchy of power politics replaces the balance of power as it existed as a result of the Cold War's bipolarity. The rules of the game are not defined anymore by the United Nations but by whichever state or group of states that succeeds in establishing global hegemony. A "*regionalism*" of power politics (represented by NATO, the so-called Gulf War Coalition, etc.) replaces the *universalism* of the United Nations in the era of so-called globality. Regrettable as it may be, the *use of force* occurs outside the traditional legal framework.

The quasi-legal concept of "humanitarian intervention" serves as the major tool to legitimize the actual use of force, outside the framework of the rule of law, by referring to

of the present world order's "great powers," this time in a quasi-religious humanitarian terminology imposed by the secularized tradition.

²⁷ On the need for a structural reform of the UN system see the analysis by the author: *The United Nations and International Democracy. The Quest for UN Reform*. Studies in International Relations, XXII. Vienna: International Progress Organization, 1997.

notions of morality and conscience. The *logic of the crusades* (inevitably combined with moral rhetoric) replaces the *rule of law*; the exercise of power explicitly relates itself to morality, to the "universal values of humanity," and thus escapes rigorous examination of its legal justification and procedural correctness. The effective *end of international law* as a system of norms binding upon all states and based on the concept of sovereign equality is brought about exactly by the pretended *moral reasoning* of those who succeeded in the power struggle of the Cold War. As stated above, it is not mere coincidence that the very term "humanitarian intervention" was a keyword in the ideological arsenal of the European powers of the 19th century and has again become the keyword of a so-called "moral" foreign policy in the "post-modern" neo-imperial order at the beginning of the 21st century. Ironically, today's *realist* doctrine of international relations is veiled in the clothes of *idealism* with the apparent intention to immunize the actual conduct of power politics, including the use of armed force, vis-à-vis a critical, increasingly "unruly" populace in a more and more *global* environment.
